United States Senate
COMMITTEE ON FINANCE
WASHINGTON, DC 20510-6200

December 23, 2008

Via Electronic Transmission

Sheila C. Bair
Chairman of the Board
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Dear. Chairman Bair:

Thank you for meeting with me and my staff last month to address my concerns over your proposed mortgage loan modification program. As I conveyed during that meeting, I feel strongly that any plan not benefit borrowers who obtained mortgages through fraud. I write now to reiterate that concern.

Since our meeting, my staff has consulted with experts across the industry in order to better understand the extent of fraud in the mortgage market. These experts agreed that fraud is pervasive and estimated that anywhere between 30% - 70% of all mortgages, and up to 50% of owner-occupied mortgages, have been fraudulently obtained. Providing a benefit such as the FDIC's proposed loan modification program to those who committed fraud is bad policy.

Many of the consulted experts agreed that a plan like the one proposed could play an integral role in stemming the flood of foreclosures. However, those same experts echoed my concern that as proposed, your plan will not deter those who intend to defraud the system nor detect those that stand to benefit despite past mortgage fraud. I understand that you do not want to dissuade borrowers from participating in the program, but failing to include some basic fraud detection and prevention measures would likely have a disastrous unintended consequence – it would provide incentive for further fraud.

Last week, I asked the Inspector General of the FDIC to conduct a fraud review on a sample of modification-eligible loans. This sort of data could prove crucial for Congress and other policymakers to obtain a realistic estimate of the level of fraud in the system.

Today, I ask you to reconsider including some very basic fraud prevention measures in the loan modification program. Based on my staff's recent work, I suggest several simple and non-obtrusive provisions that will help protect the integrity of your proposed plan:

1) Require borrowers to sign, under penalty of perjury, that their loan and application is free from fraud and/or misstatements;

2) Require borrowers to complete IRS Form 4506/T for years covered by the original and modified loan periods;

3) Include robust audit provisions which allow the FDIC Inspector General, as well as third party auditors, to examine documents of all parties in the mortgage chain;

4) Subject all loans to an independent forensic loan review; and

5) Insure all modified loans against fraud (one source estimates that the forensic loan review and fraud insurance would cost approximately $300 per loan).

The above recommendations place little additional burden on the borrower. According to one expert, the independent forensic loan review can be accomplished within 45 days and is already a prerequisite for the mortgage fraud insurance. Further, the forensic review and mortgage fraud insurance is expected to cost approximately $300 per loan file – a fraction of the potential loss from foreclosure.

I urge you to incorporate these risk management provisions into your program, as they would make it vastly more fraud-resistant and would ensure that more of the taxpayers' money is spent assisting legitimate borrowers in financial despair rather than rewarding fraudsters out to make an easy buck.

Please respond to this letter by January 8, 2009. If you have any additional questions, you can contact Jason Foster or Eben Roberts of my Committee staff at (202) 224-4515. Any formal correspondence should be sent in PDF format to Brian_Downey@finance-rep.senate.gov. Thank you for your consideration.

Sincerely,

Chuck Grassley

Charles E. Grassley
Ranking Member
Committee on Finance

cc: The Honorable Jon T. Rymer, Inspector General
Federal Deposit Insurance Corporation